

**REMARKS**

Claims 1, 3-11, 13-22, 24-33, 35-44, 46-55, 57-64, 66-76, 78-87, 89-115, and 116-119 are pending in this application. By this Amendment, claims 129-131 are canceled, without prejudice to or disclaimer of the subject matter found therein. Claims 87, 89-98, and 116-117 are withdrawn from consideration. No new matter is added. Accordingly, Reconsideration of the application is respectfully requested.

**I. Allowable Subject Matter**

Applicant gratefully acknowledges that the Office Action indicates that claims 1, 3-11, 13-22, 24-33, 35-44, 46-55, 57-64, 66-76, 78-86, 99-115, 118, and 119 are allowed.

**II. Rejection Under 35 U.S.C. §112, First Paragraph**

The Office Action rejects claim 129 under 35 U.S.C. §112, first paragraph. This rejection is moot in view of the cancellation of claim 129.

**III. Rejection Under 35 U.S.C. §102(b)**

The Office Action rejects claims 130 and 131 under 35 U.S.C. §102(b) over U.S. Patent No. 3,934,810 to Henning. This rejection is moot in view of the cancellation of claims 130 and 131.

**IV. Rejoinder**

The Office Action acknowledges that non-elected claims 87, 89-98, 116, and 117 are related to the originally examined claims as "process and apparatus for its practice." See page 2 of September 21, 2005 Office Action. Therefore, the Office Action asserts that rejoinder between these two types of inventions is "only" proper where there is a linking claim in which the recited apparatus includes a means for practicing the process. See page 2 of September 21, 2005 Office Action. Applicant respectfully disagrees.

MPEP §821.04 (b) states that:

Process claims which depend from or otherwise require all the limitations of the patentable product will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier.

Allowed independent claims 1, 11, 22, 33, 44, 55, and 75 are product claims directed to a mold (product) for manufacturing a stick of a cosmetic product. Previously presented, nonelected claims 87, 89-98, 116, and 117 are method claims directed to a method of manufacturing a stick of a cosmetic product using the mold (product). Therefore, rejoinder of nonelected claims 87, 89-98, 116, and 117 is required if independent claim 87 includes all patentable features of the molds (product) of independent claims 1, 11, 22, 33, 44, 55, and 75. See MPEP §821.04. Thus, rejoinder does not require that the claims are linked by a linking means claim.

Applicant further respectfully submits that rejoinder of claim 87 is appropriate because all features of claim 87 are indicated as allowable and have been previously examined.

The Office Action indicates that claims 1, 11, 22, 33, 44, 55, and 75 are allowable because the applied art fails to teach or suggest a mold including edges spaced apart over at least a part of the length prior to a deformation of the mold, and spaced from an upper end of the recess and from a bottom end of the recess. Claim 87 also recites such features, and thus is also allowable.

The Office Action also indicates that claim 87 recites features of the mold in Markush format indicating the features as alternative limitations. See Office Action page 3, lines 5-7. Claim 87 recites alternative features of the mold in Markush clause beginning with "wherein the mold has at least one of:"

"the side wall being deprived of recesses opening out into the internal surface," as recited in claim 1;

"a cavity with a sloping bottom wall," as recited in claim 11;

"a cavity having a part formed by two successive conical surfaces converging towards an opening of the mold," as recited in claim 22;

"a top portion having a flange," as recited in claim 33;

"a flange surrounding an opening of the mold," as recited in claim 44;

"an opening defined at least partially by a conical surface, the conical surface having an internal surface configured to be in contact with the product, the side wall being deprived of recesses opening out into said internal surface," as recited in claim 55; and

"at least one of said recesses extending longitudinally beyond a bottom of an inner cavity of said mold," as recited in claim 75.

Each of the alternative mold feature listed in the Markush clause of claim 87 has been separately recited in allowable, independent claims 1, 11, 22, 33, 44, 55, and 75. Therefore, search and examination of each of the alternative mold features recited in the Markush clause of independent claim 87 has already been conducted with respect to allowed claims 1, 11, 22, 33, 44, 55, and 75. Thus, claim 87 and dependent claims 89-98, 116, and 117 are also allowable.

Because search and examination of the alternative mold features of claim 87 has been previously conducted, no further search and consideration is required and no serious burden is placed on the Examiner to examine claim 87. Therefore, the Examiner must examine claim 87 and dependent claims 89-98, 116, and 117 on the merits. See MPEP §803.

For at least the reasons discussed, rejoinder and allowance of independent claim 87 and dependent claims 89-98, 116 and 117 are respectfully requested.

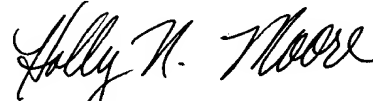
**V. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 87, 89-

98, 116, and 117, in addition to claims 1, 3-11, 13-22, 24-33, 35-44, 46-55, 57-64, 66-76, 78-86, 99-115, 118, and 119, are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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WPB:HNM/axl

Attachment:  
Petition for Extension of Time

Date: January 23, 2006

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